

Ratification of Unauthorized Commitments

United States Marine Corps



USMC Contracts

What Is an Unauthorized Commitment?

- **Nonbinding agreement because the Government representative who made it lacked authority to do so;**
- **Defined in the FAR 1.602-3(a) and described in MAPS 1.602-3;**
 - ➔ **See Contract Management Process Guide (CMPG) Section 5.11 at:
http://www.hqmc.usmc.mil/cmpg/usmc_cmpg/50Postaward.htm#511**
- **Violation of the Antideficiency Act, Title 31 U.S.C. §1341;**
- **Punishable by both administrative and penal means.**



What Is the Antideficiency Act?

- **The Antideficiency Act, Title 31 U.S.C. §1341, is one of the major laws through which Congress exercises oversight of public funds.**
- **The law prohibits government employees from committing or obligating funds in excess of those available - doing so results in an unauthorized commitment.**



Why Do I Need To Know This?

- **To avoid getting into the situation yourself;**
- **To recognize when someone else has made an unauthorized commitment on your contract or program;**
- **Understand what steps must be taken to correct the situation.**



Examples ...

- **Program office orders supplies/services before the contractual document is signed/issued;**
- **Government employee directs a contractor to perform work that is not a part of the contract;**
- **Buying Agent or GCPC Holder exceeds threshold, or funds authorized.**



What Are the Penalties?

- **The individual who made the commitment may incur a personal liability and be subject to administrative and criminal penalties.**
- **Ratification of an unauthorized commitment does not preclude disciplinary action against the responsible person. Regulations mandate that ratification procedures are not to be used in a manner that encourages or condones such commitments being made by government personnel.**



What Should Be Done?

- **Notify the contractor to stop;**
- **Determine if supplies/services have been received;**
- **Contact your Supervisor;**
- **Initiate the ratification process;**



What Is the Ratification Process?

- **An administrative process whereby an unauthorized commitment is converted into a legal contract.**
- **Contracting officers cannot simply issue a PO or modify a contract to pay an unauthorized commitment.**
- **All unauthorized commitments are subject to the ratification process, irrespective of dollar amount.**



Who Can Ratify?

- **For the Marine Corps Field Contracting System, the authorized Ratifying Official is as follows. These ratification authorities cannot be delegated further; however, ADC, I&L (Contracts) may modify these thresholds on a case-by-case basis.**
 - ▮ **Greater than \$100,000 - HQMC, Deputy Commandant (DC), Installations and Logistics (I&L).**
 - ▮ **Greater than \$25,000 up to and including \$100,000 - Assistant Deputy Commandant (ADC), I&L.**
 - ▮ **Less than or equal to \$25,000 - Chief of the Contracting Office (CCO) and Contingency Contracting Officers (CKOs) (CKOs only during deployment phase of an exercise/operation).**



When Can an Unauthorized Commitment Be Ratified?

- **Supplies or services have been provided to and accepted by the Government, or the Government otherwise has obtained or will obtain a benefit resulting from performance of the UC;**
- **The Ratifying Official has the authority to enter into a contractual commitment;**
- **The resulting contract would otherwise have been proper if made by an appropriate Contracting Officer;**
- **The Contracting Officer reviewing the UC determines the price to be fair and reasonable;**
- **The Contracting Officer recommends payment and Counsel concurs in the recommendation, and**
- **Funds are available and were available at the time the UC was made.**



Which Cannot Be Ratified?

- **Ratifying official does not have sufficient authority;**
- **Price is not fair or reasonable;**
- **A contract would have been illegal;**
- **Documentation is inaccurate or incomplete;**
- **NO personal travel, food, lodging, or items.**



What Documentation?

- **Individual who made the unauthorized commitment is the initiator;**
- **Initiator submits a Request for Ratification via the chain-of-command;**
- **Chain-of-Command officials must endorse;**
- **Commanding Officer's endorsement is required.**



Initiator's Request for Ratification

See CMPG Section 5.11 for details & sample formats:

http://www.hqmc.usmc.mil/cmpg/usmc_cmpg/50Postaward.htm#511

Initiator's signed statement must delineate:

- ➔ Who you are;**
- What unauthorized commitment has been incurred - identify the vendor, \$ amount, and date & time; What your personal involvement was; Who else was involved;**
- What the requirement was;**
- What was the urgency of need;**
- Why normal procedures were not followed;**
- What benefit the government received; What the supplies or services would have cost, had procedures been followed;**
- What the chronology of events were; and**
- Why you shouldn't be held liable.**



Request for Ratification, #2

- **Attach copies of statements from all parties involved along with invoices, requisition forms, funding documents, bills of lading, and any other documentary evidence of the transaction.**
- **Submit to the Contracting Authority via your chain-of-command.**
- **Each via must provide forwarding endorsement.**
- **The Commanding Officer must provide a specific endorsement.**



The Commanding Officer's Endorsement

- **Verifies completeness of the documentation;**
- **Determines whether the unauthorized commitment was an attempt to circumvent the process;**
- **Delineates disciplinary action taken - if any;**
- **Describes the measures taken to prevent recurrence;**
- **Declares whether appropriated funds were available to pay the commitment at the time and whether they are still available;**
- **Concludes whether the unauthorized commitment should be ratified.**



The Contracting Officer

- **Verifies documentation;**
- **Determines whether to report to higher authority;**
- **Determines whether the measures taken are adequate;**
- **Verifies funding can be used;**
- **Concludes whether to ratify;**
- **If all is well, and within authority, issues a contract for payment purposes only.**



How To Avoid Unauthorized Commitments

- **Awareness, train all personnel;**
- **Buying Agents and GCPC Holders must be educated as to responsibilities and limitations;**
- **Communicate contractual arrangements and limitations to requiring activities;**
- **Tell them what to do, how to handle unusual or unexpected situations and expenses.**

